UNITED
NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 648

Case No. 690: SA'ADIYEH

Against: The Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Hubert Thierry; Mr. Francis Spain;

Whereas, on 11 July 1992, Muwaffaq Mahmoud Sa'adiyeh, a staff member of the United Nations Relief and Works Agency for Palestine Refugees, hereinafter referred to as UNRWA, filed an application, requesting the Tribunal to order, inter alia:

"(a) As a preliminary measure, providing the Applicant with a copy of the Personnel Directive of the Respondent.

(b) Rescinding the Commissioner-General's decision not to accept the recommendation of the Joint Appeals Board.

(c) Considering the period of the Applicant's cessation from duty as special leave with full pay.

(d) Payment of compensation for the injury sustained by the Applicant during the period of cessation, including expenses and legal counsel's fees estimated at US$19,000.

..."

Whereas the Respondent filed his answer on 22 January 1993;

Whereas the Applicant filed written observations on 15 April 1993;

Whereas, on 15 April 1993, the Applicant submitted additional pleas to the Tribunal, including a request for costs "estimated at US$750.00";

Whereas, on 28 June 1994, the President of the Tribunal ruled that no oral proceedings would be held in the case;

Whereas the facts in the case are as follows:

The Applicant, an area staff member, entered the service of UNRWA on 20 August 1980, on a one year fixed-term appointment, as a Trades Instructor (Welder General) at the grade 08, step 1 level, in the Damascus Vocational Training Centre (DVTC), in the Syrian Arab Republic. He was subsequently offered a temporary indefinite appointment to the same post, at grade 09, step 1 level, with effect from 1 September 1981.

On 15 July 1991, the Applicant wrote to the Director of UNRWA Affairs in the Syrian Arab Republic, stating that he had learned from the Principal of the DVTC that a post of Trades Instructor (Welder General) would be made redundant. He requested that, should his post be abolished, he be given the opportunity to enroll in a "two year training course - Machine Maintenance and Repair..." at Wadi Al-Sir Vocational Training Centre in Jordan, "during the academic year 1991/1992".

On 18 July 1991, the Principal of the DVTC wrote, through the Field Education Officer, to the Field Personnel Officer in the Syrian Arab Republic, recommending the abolition of the Applicant's post on the ground of redundancy.

On 23 July 1991, the Field Administration Officer replied to the Field Education Officer. Noting that the proposal to abolish the Applicant's post was "reasonable" and "justified", he suggested that, before any action was taken, he consider the possibility of transferring one of the three Trades Instructors (Welder General) to the vacant post of Housemaster at the DVTC. In a reply dated 25 July 1991, the Field Education Officer advised the Field Administration Officer that none of the three welding instructors (including the Applicant) was qualified for the post of Housemaster.

The Applicant wrote to the Director of UNRWA Affairs on 28 July 1991, explaining that his post was to be abolished and seeking his assistance in appointing him to the post of Housemaster.

On 2 September 1991, the Field Personnel Officer wrote to the Applicant to inform him of the Agency's decision to terminate his services on grounds of redundancy, as follows:

> "Further to the information communicated to you through your supervisors, this is to confirm that the post of Trades Instructor Welder which you currently fill has been abolished effective 1 September 1991.
>
> In the circumstances, and as there is at present no suitable vacant post into which you can be accommodated, your services shall be terminated on grounds of redundancy effective Close of Business on 31 August 1991, under the provisions of area staff rule 109.1."

On 25 September 1991, the Applicant requested administrative review of the decision to terminate his services on grounds of redundancy, in accordance with area staff rule 111.3(1). He claimed that he had not been considered for another post because of prejudice against him. He asked that his termination be reconsidered and that he be offered an alternative post.

In a reply dated 9 October 1991, the Officer-in-Charge at the Field Office confirmed the Commissioner-General's decision, and assured the Applicant that the Agency would give due consideration to future applications for any position which matched his qualifications.

On 24 October 1991, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 23 April 1992. Its findings and recommendation read, in part, as follows:

> "c. ...the Board believes that more consideration could have been made to keep the Appellant in the Agency's service prior to terminating his services on grounds of redundancy.
>
> ...

e. Although the Board does not see on [the] surface that the administrative procedure in dealing with the Appellant's case and his termination on grounds of redundancy were an abrogation of the Agency's standing rules and regulations, yet the clear lack of appropriate endeavours to find him an alternative suitable post makes the Board infer that the Appellant was a victim of some prejudice and that his redundancy problem was not handled carefully.

8. Recommendations

In view of the foregoing, the Board makes the following recommendations:

(a) Reinstatement of the Appellant in any vacant post with which his qualifications are commensurate and in a manner that is not disadvantageous to him.

(b) Considering the period between the date of terminating his services, i.e. 31 August 1991 and the date of his reinstatement as special leave with full pay."

On 21 May 1992, the Commissioner-General transmitted to the Applicant a copy of the JAB report and informed him as follows:

"I understand that the Administration did endeavour to find another post for you, that you were duly considered for the only other suitable post that was vacant at the time of your separation, but that you were found not fully qualified for it. Therefore, regretfully, I have to inform you that I am unable to accept the Board's recommendations and that the decision to terminate your services on grounds of redundancy will stand.

Although we can do nothing more in respect of your former service with UNRWA, I am pleased to note that you are now being offered new employment with UNRWA in a grade 06 post of Clerk 'B'.

..."

On 24 May 1992, the Field Administration Officer wrote to the Applicant, offering him re-employment by way of reinstatement to the post of Storekeeper, which is normally a grade 06 post, at grade 08, step 13, thereby minimizing as much as possible the salary difference between his former post of Trades Instructor (grade 10)

and his new appointment. On the same date, the Applicant acknowledged with thanks the Field Administration Officer's letter and sought further information about the offer. In a reply dated 25 May 1992, the Field Administration Officer provided the Applicant with further details and confirmed that, on re-instatement, the Applicant would have to repay separation benefits he had received, in the same amount and currency.

On 26 May 1992, the Applicant wrote to the Field Administration Officer, setting some conditions to his acceptance of the offer to re-employ him. However, on 28 May 1992, the Applicant signed a statement by which he accepted appointment to the post of Storekeeper, without prejudice to his recourse to the Tribunal.

On or about 5 July 1992, the Field Personnel Officer explained to the Applicant that since his separation from the Agency had occurred less than 12 months ago, his re-employment should normally be implemented by way of reinstatement instead of reappointment. In a letter to the Applicant dated 15 July 1992, the Field Administration Officer explained that the offer of re-instatement included protection at grade 08, step 13, and that in the event of his accepting the alternative offer of re-appointment, he would be placed at grade 06, step 16.

In a reply dated 25 July 1992, the Applicant requested, inter alia, that he be paid his salary for the period that followed the termination of his services until his re-employment, and that he be reappointed at grade 08, step 13, with effect from 1 September 1992. The Field Administration Officer wrote back on 27 July 1992, denying the request for back pay and stating the two options that were available to the Applicant, as:

(a) To accept grade protection at grade 08, and repay separation benefits; or

(b) To accept appointment at grade 06, with no grade protection, and not repay separation benefits.

The Applicant elected, in a letter dated 5 August 1992, to be reappointed at grade 06, step 16, and reserved his right to pursue his case before the Tribunal. His re-appointment was later

confirmed by the Field Personnel Officer, in a letter dated 31 August 1992.

On 11 July 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

An agreement had been made as to which instructors would be made redundant, and consequently, the decision to terminate the Applicant's services was based on prejudice and abuse of authority.

Whereas the Respondent's principal contentions are:

1. The Joint Appeals Board duly considered all the submissions filed by the Applicant.

2. The Applicant's services were validly terminated on grounds of redundancy in accordance with the rules.

3. The Applicant has been re-employed and reappointed to another suitable post.

The Tribunal, having deliberated from 27 June to 20 July 1994, now pronounces the following judgement:

I. The Tribunal finds that, when the Applicant's post was abolished, a situation of redundancy existed. The question is whether the Applicant was selected from the three possible candidates for redundancy because of bias and prejudice against him.

II. According to the record, as far back as 1988, the Applicant and his fellow instructors were told of the impending abolition of two Trades Instructor posts at the Damascus Training Centre.

III. The first abolition of posts took place in 1990/1991. According to the Applicant, it had been agreed among the instructors, allegedly in the presence of the Senior Trades Instructor, that Mr. Yasin and Mr. Suleh, other area staff members,

would accept termination. Mr. Yasin's post was eliminated in 1990/1991. He, in fact, requested early voluntary retirement in lieu of termination of appointment on grounds of redundancy.

IV. With respect to the abolition of the second post, the Applicant claims that, although Mr. Suleh wanted to accept the redundancy of his post, he was not allowed to do so by the Principal, because the Principal wanted to get rid of the Applicant.

V. The Applicant claims that when the Principal asked verbally which of the remaining three instructors wished his post to be abolished, Mr. Suleh requested that his post be the one but that the Principal told him to think carefully as his livelihood was involved. The Applicant also claims that Mr. Suleh told another person, who is unnamed, that when he went to the Principal to indicate that he would accept the redundancy, the Principal said that he should consider that the Principal had not heard him; when he again went to the Principal, Mr. Suleh was told that he was not free to take the decision.

VI. It was the Principal who recommended that of the three remaining instructor posts, the Applicant's post be abolished. The Field Administration Officer, to whom this recommendation was made, asked that one of the three be considered for the post of Housemaster in lieu of termination. The Field Education Officer, however, replied that none of the three was qualified for this post.

VII. As further evidence to support his contention of prejudice, the Applicant refers to the Principal's reluctance to discuss the matter directly with him and to his refusal to make an appointment for the Applicant to see the Director of UNRWA Affairs, Syrian Arab Republic. The Applicant also refers to what he describes as the Hourani case, a case which led to disciplinary action. He says that, because he refused to follow the Principal's line in that case, the Principal became enraged. Indeed, the Applicant says that

a letter dated 3 June 1991, which was critical of him, arose only because of the Hourani incident. He claims that another letter critical of him, dated 2 July 1989, was also unjustified. On the matter of Hourani, the Applicant says that he was told by the Principal, in the presence of the Senior Trades Instructor: "Let Hourani do you good, you should not have testified as you did in Hourani's case."

VIII. The Administration's response to the Applicant's case is that, in effect, the relevant rules, regulations and procedures were followed.

IX. The question of whether there was properly a redundancy need not be discussed, as not even the Applicant denies this. The question is whether the decision to terminate the Applicant's services rather than those of Mr. Suleh was the correct one.

X. The Agency says that the termination was effected on the basis of a study of past performance reports. It says that it acted in accordance with Personnel Directive A/9. The evaluation carried out showed one incumbent with better performance reports than the Applicant, the other two (including the Applicant) had the same grading. The incumbent with equal grading to the Applicant's had no letters of reprimand on his file. Finally, as the Applicant was the one with the shortest service, it was correct to choose his post for abolition.

XI. While the Agency acted properly on the face of it, should it have taken into account the agreement, if there was one, referred to by the Applicant? Mr. Yasin's departure was undoubtedly voluntary but what evidence is there that it resulted from an agreement? The agreement was supposedly made in the presence of several others, yet no evidence has been adduced from them. Equally, there is a lack of evidence from Mr. Suleh and from the Assistant Field Personnel Officer who was apparently approached by Mr. Suleh after the

Applicant's termination, to enquire as to why his own post had not been abolished. There is also the letter dated 15 July 1991, from the Applicant to the Director of UNRWA Affairs, Syrian Arab Republic, in which he asks for enrollment in a two year training course if a decision were made to abolish his own post.

XII. This request raises the question of how much faith the Applicant himself had in any agreement that he alleges was made. This and the absence of any evidence from Mr. Suleh or others, casts doubt on the existence of an agreement. Even if there had been such an agreement, it is difficult to see how it could have been binding on the Agency.

XIII. Equally, it seems to the Tribunal that the Applicant has not compellingly shown that there was bias and prejudice against him on the part of the Principal. While it was the Principal who suggested abolition of the Applicant's post, there was no opposition to it from anybody in the Agency. The alleged statement of the Principal that he would pretend that he had not heard Mr. Suleh comes from an unnamed source. Despite the Principal's initial refusal to discuss the matter with the Applicant and to arrange an appointment for him with the Director General, UNRWA, Syrian Arab Republic, he eventually did both.

XIV. The Hourani incident raises an unpleasant spectre, but the difficulty here, from the Applicant's point of view, is to tie it in conclusively with the decision to terminate his appointment. Indeed, his assertion that the second letter of criticism referred to in paragraph VII above was sent to him because of the Hourani episode, is weakened by his suggestion that the earlier letter was also unjustified.

XV. On balance, the Tribunal is unable to find that the termination of the Applicant's services arose from bias and

prejudice. In addition, the Tribunal holds that the Agency followed the correct procedures in abolishing the post.

XVI. However, the matter does not end there. The question arises whether the Agency did all that it reasonably could to find an alternative post for the Applicant. The Agency was under an obligation to do so. Its initial suggestion that one of the three incumbents of the original posts be considered for the post of Housemaster cannot be taken seriously. Although the Applicant expressed interest in the post, he was not even interviewed. It is difficult to comprehend how the Applicant could be said to have been duly considered for this post.

XVII. The recommendation of the Joint Appeals Board is relevant because, as a result of that recommendation, the Administration offered the Applicant a new post, that of Clerk "B" grade 06. Subsequently, he was offered the post of Storekeeper A, grade 06. He was to be placed at grade 08, step 13, with protection. This was an area staff temporary indefinite appointment. The re-employment was to be by way of re-instatement, which required that he refund the Agency all the money he had received on termination, in the same currency. There was also to be a probationary period of one year.

XVIII. The Applicant was offered the rather unappealing choice of either grade protection at grade 08, by way of reinstatement, with repayment of separation benefits or grade 06, by way of reappointment, with no grade protection but without the obligation to repay the benefits. Because he was not in a position to return the money, he accepted the post at grade 06. This was on condition that he could pursue his appeal and that he would also seek compensation. The Agency confirmed the grade 06 offer, subject to the same probationary period.

XIX. While the Tribunal notes with satisfaction the re-appointment of the Applicant, it must also take into account several other factors.

It was through no fault of his own that the Applicant became redundant. He would surely still be working in his original post if redundancy had not arisen. The Administration added to the worries and difficulties which must inevitably follow the loss of employment by not making adequate efforts to re-instate the Applicant in another post. He had been working for 11 years and had reached grade 10, step 8 when he was made redundant. He has had to face a probationary period in his new post and his choice at the end between the two available options was not really a free one. For all this, he deserves compensation.

XX. The Tribunal wishes to make clear that the requests made by the Applicant in the incidental pleas are not essential in considering the case.

XXI. The Applicant has requested compensation for the injuries sustained, including expenses and legal counsel's fees, estimated at US$19,000.00. He has also requested, in his additional pleas, payment of US$750.00 by way of costs and expenses. The Tribunal, in keeping with its jurisprudence (Judgement No. 237, Powell (1979), awards him the sum of US$500.00 only.

XXII. For the foregoing reasons, the Tribunal orders the Respondent to:

(a) Pay to the Applicant his net base salary, at the rate in effect on the date of his separation, from the date of his separation until his re-appointment;

(b) Pay to the Applicant by way of further damages four months net base salary, at the rate in effect on the date of his separation;

(c) Pay to the Applicant the sum of US$500.00, for legal expenses.

(Signatures)

Samar SEN
President

Hubert THIERRY
Member

Francis SPAIN
Member

Geneva, 20 July 1994

R. Maria VICIEN MILBURN
Executive Secretary